

ENROLLED BILL
-- Budget and Taxation/Ways and Means --

Introduced by **Senator Hafer**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Tax Credit for Maryland-Mined Coal**

3 FOR the purpose of altering certain credits allowed against the public service
4 company franchise tax and State income tax for the purchase of
5 Maryland-mined coal; limiting the credit to the amount approved by the
6 Department of Assessments and Taxation; limiting the total amount of credits
7 that the Department may approve for certain calendar years to certain amounts;
8 ~~allowing a credit against the public service company franchise tax or State~~
9 ~~income tax for certain new or retrofitted facilities using certain technology that~~
10 ~~use Maryland-mined coal; requiring the Department of Business and Economic~~
11 ~~Development to report to certain committees on the economic and~~
12 ~~environmental impacts of the Maryland-mined coal tax credit~~ prohibiting the
13 credits from being claimed after a certain date; providing for the application of
14 this Act; and generally relating to certain credits against ~~the~~ certain taxes for
15 the purchase of Maryland-mined coal.

16 BY repealing and reenacting, with amendments,

1 Article - Tax - General
 2 Section 8-406(b) and 10-704.1
 3 Annotated Code of Maryland
 4 (2004 Replacement Volume and 2005 Supplement)

5 ~~BY adding to~~
 6 ~~Article Tax General~~
 7 ~~Section 10-726~~
 8 ~~Annotated Code of Maryland~~
 9 ~~(2004 Replacement Volume and 2005 Supplement)~~

10 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 11 MARYLAND, That the Laws of Maryland read as follows:

12 **Article - Tax - General**

13 8-406.

14 ~~(b) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE~~
 15 ~~MEANINGS INDICATED.~~

16 ~~(II) "CERTIFIED EMPLOYMENT POSITIONS" MEANS POSITIONS~~
 17 ~~CERTIFIED BY THE DEPARTMENT AS:~~

18 ~~1. FULL TIME POSITIONS OF INDEFINITE DURATION~~
 19 ~~REQUIRING AT LEAST 840 HOURS OF AN EMPLOYEE'S TIME DURING AT LEAST 24~~
 20 ~~WEEKS IN A 6 MONTH PERIOD;~~

21 ~~2. PAYING AT LEAST 150% OF THE FEDERAL MINIMUM WAGE;~~

22 ~~3. LOCATED IN MARYLAND;~~

23 ~~4. NEWLY CREATED, AS A RESULT OF THE ESTABLISHMENT~~
 24 ~~OF A NEW FACILITY IN A SINGLE LOCATION IN MARYLAND; AND~~

25 ~~5. FILLED.~~

26 ~~(III) "CERTIFIED EXPENSES" MEANS COSTS CERTIFIED BY THE~~
 27 ~~DEPARTMENT AS DIRECTLY RELATED TO:~~

28 ~~1. THE ACQUISITION, CONSTRUCTION, AND INSTALLATION~~
 29 ~~OF EQUIPMENT DESIGNED TO REDUCE THE LEVEL OF AIR OR WATER POLLUTION~~
 30 ~~RELEASED AS A RESULT OF THE OPERATION OF A RETROFITTED FACILITY; OR~~

31 ~~2. THE CONSTRUCTION OF A NEW FACILITY, INCLUDING~~
 32 ~~OBLIGATIONS INCURRED FOR MATERIALS, LABOR, CONTRACTORS,~~
 33 ~~SUBCONTRACTORS, OR BUILDERS AND THE COSTS OF ACQUIRING LAND OR RIGHTS~~
 34 ~~IN LAND.~~

1 (IV) "NEW FACILITY" MEANS A FACILITY LOCATED IN MARYLAND
 2 THAT:
 3 1. USES MARYLAND MINED COAL TO GENERATE ENERGY;
 4 2. IS NOT A RETROFITTED FACILITY;
 5 3. IS CONSTRUCTED AFTER JANUARY 1, 2007, AT A COST OF
 6 NOT LESS THAN \$350,000,000 IN CERTIFIED EXPENSES;
 7 4. RESULTS IN THE CREATION OF AT LEAST 50 CERTIFIED
 8 EMPLOYMENT POSITIONS; AND
 9 5. IS DESIGNED TO EXCEED THE AIR EMISSION STANDARDS
 10 REQUIRED IN BOTH STATE AND FEDERAL LAWS AND REGULATIONS IN EFFECT AT
 11 THE TIME THE FACILITY BEGINS OPERATIONS.

12 (V) "RETROFITTED FACILITY" MEANS AN EXISTING FACILITY
 13 LOCATED IN MARYLAND THAT INSTALLS OR IMPROVES ITS POLLUTION CONTROL
 14 EQUIPMENT IF:

15 1. THE INSTALLATION OR IMPROVEMENT OCCURS AFTER
 16 JANUARY 1, 2007, AT A COST OF NOT LESS THAN \$100,000,000 IN CERTIFIED EXPENSES;
 17 AND

18 2. THE FACILITY IS DESIGNED TO EXCEED THE AIR
 19 EMISSION STANDARDS REQUIRED IN BOTH STATE AND FEDERAL LAWS AND
 20 REGULATIONS IN EFFECT AT THE TIME THE FACILITY BEGINS OPERATIONS AFTER
 21 INSTALLATION OR IMPROVEMENT OF THE POLLUTION CONTROL EQUIPMENT.

22 (b) (2) (1) (I) [A] SUBJECT TO THE LIMITATIONS OF THIS PARAGRAPH
 23 SUBSECTION, A public service company, including any multijurisdictional public
 24 service company, may claim a credit against the public service company franchise tax
 25 in the amount of \$3 for each ton of Maryland-mined coal that the public service
 26 company purchased in the calendar year.

27 (II) THE CREDIT UNDER THIS SUBSECTION MAY NOT BE CLAIMED
 28 FOR MARYLAND-MINED COAL PURCHASED IN A CALENDAR YEAR BEGINNING AFTER
 29 DECEMBER 31, 2020.

30 (2) (I) THIS PARAGRAPH APPLIES ONLY TO CREDITS CLAIMED UNDER
 31 THIS SUBSECTION FOR CALENDAR YEARS BEGINNING ON OR AFTER JANUARY 1, 2007.

32 (II) THE AMOUNT CLAIMED AS A CREDIT UNDER THIS PARAGRAPH
 33 SUBSECTION MAY NOT EXCEED THE AMOUNT APPROVED BY THE DEPARTMENT
 34 UNDER THIS PARAGRAPH.

35 (III) BY JANUARY 15 OF THE CALENDAR YEAR FOLLOWING THE END
 36 OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED COAL WAS PURCHASED,
 37 A PUBLIC SERVICE COMPANY, OR A COGENERATOR OR ELECTRICITY SUPPLIER AS

1 DEFINED IN § 10-704.1 OF THIS ARTICLE, SHALL SUBMIT AN APPLICATION TO THE
2 DEPARTMENT FOR APPROVAL OF THE CREDIT ALLOWED UNDER THIS PARAGRAPH.

3 (IV) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, THE
4 TOTAL AMOUNT OF CREDITS APPROVED BY THE DEPARTMENT UNDER THIS
5 PARAGRAPH FOR ANY CALENDAR YEAR MAY NOT EXCEED:

6 ~~1. \$12,000,000 FOR CALENDAR YEAR 2006;~~

7 ~~2. \$9,000,000 FOR A CALENDAR YEAR BEGINNING AFTER~~
8 ~~DECEMBER 31, 2006, BUT BEFORE JANUARY 1, 2015;~~

9 ~~3. \$6,000,000~~ 2. \$6,000,000 ~~\$4,200,000~~ \$6,000,000 FOR A CALENDAR
10 YEAR BEGINNING AFTER DECEMBER 31, ~~2014~~ 2010, BUT BEFORE JANUARY 1, ~~2021~~ 2015;
11 OR

12 ~~4. \$3,000,000~~ 3. \$3,000,000 ~~\$2,100,000~~ \$3,000,000 FOR A CALENDAR
13 YEAR BEGINNING AFTER DECEMBER 31, ~~2020~~ 2014, BUT BEFORE JANUARY 1, 2021.

14 (V) SUBJECT TO SUBPARAGRAPH (VI) OF THIS PARAGRAPH, IF THE
15 TOTAL AMOUNT OF CREDITS APPLIED FOR IN ANY CALENDAR YEAR UNDER THIS
16 PARAGRAPH EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH (IV) OF
17 THIS PARAGRAPH, THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS
18 PARAGRAPH FOR EACH APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF
19 MULTIPLYING THE CREDIT APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

20 1. THE NUMERATOR OF WHICH IS THE MAXIMUM SPECIFIED
21 UNDER SUBPARAGRAPH (IV) OF THIS PARAGRAPH; AND

22 2. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
23 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
24 CALENDAR YEAR.

25 (VI) 1. OF THE TOTAL CREDITS APPROVED FOR ANY CALENDAR
26 YEAR BEGINNING AFTER DECEMBER 31, 2006, ~~BUT BEFORE JANUARY 1, 2021~~, THE
27 DEPARTMENT SHALL RESERVE ~~\$2,250,000~~ \$2,100,000 ~~\$2,250,000~~ OF THE CREDITS FOR
28 PURCHASES OF MARYLAND-MINED COAL THAT WILL BE USED BY A FACILITY IN
29 MARYLAND.

30 2. IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY ALL
31 APPLICANTS FOR ANY CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED
32 COAL THAT WILL BE USED IN MARYLAND EXCEEDS ~~\$2,250,000~~ \$2,100,000 ~~\$2,250,000~~,
33 THE DEPARTMENT SHALL APPROVE A CREDIT UNDER THIS PARAGRAPH FOR EACH
34 APPLICANT IN AN AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT
35 APPLIED FOR BY THE APPLICANT TIMES A FRACTION:

36 A. THE NUMERATOR OF WHICH IS ~~\$2,250,000~~ \$2,100,000
37 \$2,250,000; AND

1 B. THE DENOMINATOR OF WHICH IS THE TOTAL OF ALL
2 CREDITS APPLIED FOR BY ALL APPLICANTS UNDER THIS PARAGRAPH FOR THE
3 CALENDAR YEAR FOR THE PURCHASE OF MARYLAND-MINED COAL THAT WILL BE
4 USED IN MARYLAND.

5 (VII) ON OR BEFORE FEBRUARY 15 OF THE CALENDAR YEAR
6 FOLLOWING THE END OF THE CALENDAR YEAR IN WHICH THE MARYLAND-MINED
7 COAL WAS PURCHASED, THE DEPARTMENT SHALL CERTIFY TO EACH APPLICANT
8 CLAIMING A CREDIT THE AMOUNT OF THE TAX CREDITS APPROVED BY THE
9 DEPARTMENT FOR THAT APPLICANT UNDER THIS PARAGRAPH.

10 ~~(3) (4) A NEW FACILITY OR RETROFITTED FACILITY THAT BURNS
11 MARYLAND-MINED COAL MAY CLAIM A CREDIT AGAINST EITHER THE PUBLIC
12 SERVICE COMPANY FRANCHISE TAX OR THE STATE INCOME TAX IN THE AMOUNT OF
13 \$3 FOR EACH TON OF MARYLAND-MINED COAL THAT THE FACILITY PURCHASED IN
14 THE CALENDAR YEAR.~~

15 ~~(II) A NEW FACILITY OR A RETROFITTED FACILITY MAY CLAIM THE
16 CREDIT PROVIDED FOR UNDER THIS PARAGRAPH FOR A PERIOD OF 10 YEARS FROM
17 THE TIME THAT THE NEW PLANT BECAME OPERATIONAL OR THE RETROFITTED
18 FACILITY BEGAN OPERATIONS AFTER ITS RETROFIT.~~

19 ~~(III) THE TAX CREDIT UNDER THIS PARAGRAPH MAY BE CLAIMED
20 ONLY FOR MARYLAND-MINED COAL THAT IS CONSUMED IN THE NEW FACILITY OR
21 THE RETROFITTED FACILITY.~~

22 ~~(IV) TAX CREDITS ALLOWED UNDER THIS PARAGRAPH ARE NOT
23 SUBJECT TO THE LIMITATIONS IMPOSED UNDER PARAGRAPH (2) OF THIS
24 SUBSECTION.~~

25 ~~(V) A NEW FACILITY OR RETROFITTED FACILITY THAT CLAIMS A
26 CREDIT UNDER THIS PARAGRAPH MAY NOT CLAIM A TAX CREDIT UNDER EITHER
27 PARAGRAPH (2) OF THIS SUBSECTION OR § 10-704.1 OF THIS ARTICLE.~~

28 ~~(VI) A NEW FACILITY OR RETROFITTED FACILITY SHALL SUBMIT AN
29 APPLICATION TO THE DEPARTMENT FOR CERTIFICATION AS A NEW FACILITY OR
30 RETROFITTED FACILITY BEFORE CLAIMING THE TAX CREDIT AVAILABLE UNDER
31 THIS PARAGRAPH.~~

32 ~~(VII) A NEW FACILITY OR RETROFITTED FACILITY SHALL OBTAIN
33 AND SUBMIT TO THE APPROPRIATE STATE AGENCY WITH THE TAX RETURN ON
34 WHICH THE CREDIT IS CLAIMED THE CERTIFICATION FROM THE DEPARTMENT THAT
35 THE ENTITY HAS MET THE REQUIREMENTS OF THIS PARAGRAPH AND IS ELIGIBLE
36 FOR THE CREDIT.~~

37 ~~(4) (4) ON OR BEFORE NOVEMBER 1, 2019, THE DEPARTMENT OF
38 BUSINESS AND ECONOMIC DEVELOPMENT SHALL REPORT TO THE SENATE BUDGET
39 AND TAXATION COMMITTEE AND THE HOUSE COMMITTEE ON WAYS AND MEANS ON
40 THE MARYLAND-MINED COAL TAX CREDIT AVAILABLE UNDER PARAGRAPH (2) OF
41 THIS SUBSECTION AND § 10-704.1 OF THIS ARTICLE.~~

1 ~~(H) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF THIS~~
2 ~~PARAGRAPH SHALL INCLUDE:~~

3 ~~1. RECOMMENDATIONS AS TO WHETHER THE~~
4 ~~MARYLAND MINED COAL TAX CREDIT SHOULD BE CONTINUED, DISCONTINUED, OR~~
5 ~~ALTERED;~~

6 ~~2. AN ANALYSIS OF THE ECONOMIC BENEFITS OF THE~~
7 ~~MARYLAND MINED COAL TAX CREDIT, INCLUDING ITS IMPACT ON EMPLOYMENT IN~~
8 ~~MARYLAND; AND~~

9 ~~3. AN ANALYSIS OF THE ENVIRONMENTAL IMPACT OF THE~~
10 ~~MARYLAND MINED COAL TAX CREDIT, INCLUDING AN EVALUATION OF ANY AIR OR~~
11 ~~WATER QUALITY ISSUES CREATED BY THE MINING OF MARYLAND COAL.~~

12 10-704.1.

13 (a) (1) In this section the following words have the meanings indicated.

14 (2) "Cogenerator" means a qualifying cogenerator or qualifying small
15 power producer as determined by the Federal Energy Regulatory Commission under
16 the Public Utility Regulatory Policies Act of 1978.

17 (3) "Electricity supplier" has the meaning stated in § 1-101 of the Public
18 Utility Companies Article.

19 (b) This section does not apply to:

20 (1) a cogenerator or electricity supplier that is subject to the public
21 service company franchise tax; or

22 (2) an electricity supplier that, before July 1, 1999, was not an electric
23 company as defined in § 1-101 of the Public Utility Companies Article as in effect on
24 June 30, 1999, unless the electricity supplier is an affiliate of such an electric
25 company.

26 (c) [A] SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2) OF THIS ARTICLE, A
27 cogenerator or electricity supplier may claim a credit against the State income tax in
28 the amount of \$3 for each ton of Maryland-mined coal that the cogenerator or
29 electricity supplier purchased in the taxable year.

30 (d) (1) A cogenerator or electricity supplier may only apply the credit
31 against the State income tax for the taxable year in which the credit was earned.

32 (2) The amount of the credit may not exceed the State income tax for
33 that taxable year.

34 (3) THE TOTAL AMOUNT OF CREDITS APPROVED UNDER THIS SECTION
35 SHALL BE SUBJECT TO THE LIMITATIONS IN § 8-406(B)(2)(IV), (V), AND (VI) OF THIS
36 ARTICLE.

1 (E) A COGENERATOR OR ELECTRICITY SUPPLIER SHALL SUBMIT AN
2 APPLICATION IN ACCORDANCE WITH § 8-406(B)(2)(III) OF THIS ARTICLE IN ORDER TO
3 CLAIM THE CREDIT AVAILABLE UNDER THIS SECTION.

4 ~~10-726.~~

5 (A) (1) ~~IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
6 ~~INDICATED.~~

7 (2) ~~"COGENERATOR" MEANS A QUALIFYING COGENERATOR OR~~
8 ~~QUALIFYING SMALL POWER PRODUCER AS DETERMINED BY THE FEDERAL~~
9 ~~REGULATORY COMMISSION UNDER THE PUBLIC UTILITY REGULATORY POLICIES ACT~~
10 ~~OF 1978.~~

11 (3) ~~"ELECTRICITY SUPPLIER" HAS THE MEANING STATED IN § 1-101 OF~~
12 ~~THE PUBLIC UTILITY COMPANIES ARTICLE.~~

13 (4) ~~"NEW FACILITY" HAS THE MEANING STATED IN § 8-406(B)(1)(IV) OF~~
14 ~~THIS ARTICLE.~~

15 (5) ~~"RETROFITTED FACILITY" HAS THE MEANING STATED IN §~~
16 ~~8-406(B)(1)(V) OF THIS ARTICLE.~~

17 (B) ~~THIS SECTION DOES NOT APPLY TO:~~

18 (1) ~~A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS SUBJECT TO~~
19 ~~THE PUBLIC SERVICE COMPANY FRANCHISE TAX; OR~~

20 (2) ~~AN ELECTRICITY SUPPLIER THAT, BEFORE JULY 1, 1999, WAS NOT AN~~
21 ~~ELECTRIC COMPANY AS DEFINED IN § 1-101 OF THE PUBLIC UTILITY COMPANIES~~
22 ~~ARTICLE AS IN EFFECT ON JUNE 30, 1999, UNLESS THE ELECTRICITY SUPPLIER IS AN~~
23 ~~AFFILIATE OF SUCH AN ELECTRIC COMPANY.~~

24 (C) ~~A COGENERATOR OR ELECTRICITY SUPPLIER THAT IS A NEW FACILITY OR~~
25 ~~A RETROFITTED FACILITY MAY CLAIM A CREDIT AGAINST THE STATE INCOME TAX AS~~
26 ~~PROVIDED IN § 8-406(B)(3) OF THIS ARTICLE.~~

27 (D) ~~A COGENERATOR OR ELECTRICITY SUPPLIER THAT CLAIMS A CREDIT~~
28 ~~UNDER THIS SECTION MAY NOT CLAIM A TAX CREDIT UNDER § 8-406(B)(2) OF THIS~~
29 ~~ARTICLE OR § 10-704.1 OF THIS SUBTITLE.~~

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 July 1, 2006, and shall be applicable to all taxable years beginning after December 31,
32 2006.

